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Supreme Court of the United States

No. 1042—October Term, 1963

ZOLA A. ARONSON,

Petitioner,

vs.

JOHN F. McNEILL, Superintendent of Matteawan State Hospital,

Respondent.

ON PETITION FOR CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Statement

Petitioner seeks a writ of certiorari to review an order of the New York Court of Appeals, entered November 21, 1963, dismissing an appeal from an order of the Appellate Division, Second Department, entered July 1, 1963, unanimously affirming an order of the Supreme Court, Dutchess County (Hoyt, J.), entered October 16, 1962, dismissing a petition for a writ of *habeas corpus*.

Reported below: 13 N. Y. 2d 1043.

Facts

The petitioner herein, Zola A. Aronson, is an attorney, maintaining a law office in New York City. He was not, at the time of the commencement of this proceeding, nor is now, a patient at the Matteawan State Hospital. David

N. Fields, his counsel herein, is in fact the petitioner's law partner, in the firm of Fields, Merritt & Aronson, 36 West 44th Street, New York City. Concededly, neither Mr. Aronson nor Mr. Fields has ever been retained by any of the 57 patients referred to in the *habeas corpus* petition, nor have they been retained by any of the families of these patients.

The *habeas corpus* petition, verified by Mr. Aronson on February 14, 1962, presented not one issue of fact. Its sole purpose was to challenge the constitutionality of New York Correction Law, § 412, which authorizes transfers of certain patients from other state hospitals to the Matteawan State Hospital. The petition alleged that fifty-seven persons were being held in Matteawan pursuant to the provisions of § 412. The petition conceded, however, that the names of these persons were unknown — "the said persons restrained being persons whose names are unknown" — to the relator. Nor did the petition allege that either the petitioner or his counsel had been retained to represent even one of these patients.

The reference to fifty-seven patients apparently came about in the following way. In 1960, in an entirely separate and unrelated federal proceeding, one John J. Carroll obtained a writ of *habeas corpus* in a United States District Court, to contest the constitutionality of § 442 of the Correction Law, pursuant to which he had been transferred to Matteawan from the Pilgrim State Hospital.

On April 15, 1960, the United States District Court for the Southern District of New York, after a hearing, dismissed the writ, on the merits. The Court found that, aside from some additional security measures taken at Matteawan Hospital, the treatment accorded patients there and the record of cures effected there was the same as in other state hospitals. It concluded that Matteawan was

undoubtedly a hospital and not a jail, and that the selection of Matteawan as the hospital appropriate for Carroll's treatment was a purely professional administrative matter for decision by the Commissioner of Mental Hygiene, not requiring notice and hearing.

On appeal, the United States Court of Appeals for the Second Circuit reversed, holding that Correction Law § 412 violated the equal protection clause of the United States Constitution. Although the Court refused to set aside the District Court's finding that Matteawan Hospital was a hospital and not a jail, it held that the equal protection clause required that appellee should have been accorded a hearing on his transfer from Pilgrim State Hospital to Matteawan State Hospital, since Mental Hygiene Law § 85 provided for a hearing in the case of other patients under civil process. The Court ordered that the patient be transferred back to Pilgrim State Hospital. *U. S. ex rel. Carroll v. McNeill*, 294 F. 2d 117.

Thereupon, the Superintendent of the Matteawan State Hospital filed a Notice of Appeal to the Supreme Court of the United States together with the requisite Jurisdictional Statement. It was noted in that Statement that the decision of the United States Court of Appeals affected the status of fifty-seven patients then in Matteawan, having been transferred there pursuant to Correction Law, § 412.

On January 8, 1962 this Court noted probable jurisdiction (368 U. S. 951) but two weeks later, Carroll died. Counsel for appellee Carroll then filed a memorandum, suggesting that the cause was moot and the Superintendent's *appeal* be dismissed. The Superintendent then moved to vacate the judgment of the United States Court of Appeals and to remand the cause to the District Court, with directions to dismiss the cause as moot. The judgment of the

Circuit Court was vacated and the District Court instructed to dismiss the cause as moot. *McNeill* v. *Carroll*, 369 U. S. 149 (1962).

The petitioner in this instant matter, apparently interested in the question of the constitutionality of § 412, obviously read our (1961) Jurisdictional Statement in the *Carroll* case and noted the reference therein to fifty-seven patients then confined in Matteawan pursuant to that section. By means of a writ of *habeas corpus*, he has attempted to test the constitutionality of § 412, in their behalf, although not retained by any of these patients, admittedly not knowing any of them not himself a patient.

A writ of *habeas corpus* was granted on February 19, 1962, directing that on March 27, 1962, the respondent produce the fifty-seven persons referred to in our Jurisdictional Statement. The respondent did not submit a Return to this writ but, instead, moved in the Supreme Court, Dutchess County, for an order dismissing the petition and vacating the writ, upon the ground that the Petition did not conform to the provisions of Civil Practice Act § 1234 and upon the further ground that the relator apparently did not actually represent any of these patients.

None of these fifty-seven patients was produced in Court. No Return to the writ was ever filed or served, and no question of fact was ever raised or determined. What happened on the return day of the writ is perhaps best described in the opinion of Mr. Justice Hoyt (in the instant matter) in the Supreme Court, Dutchess County:

> "On the return day of this [Aronson] writ another writ in a proceeding entitled *People ex rel. Brown* v. *McNeill* was returnable, which latter writ involved a relator transferred to Matteawan State Hospital from a state hospital by an administrative order pursuant to Section 412 of the Correction Law by reason of the

relator's continued manifestation of criminal tendencies.

"There was thus the same constitutional issue involved in the Brown writ as in the writ at bar. The respondent, thereupon, agreed to withdraw his motion to vacate the writ upon the grounds above stated and consented to be bound by the ruling the court might make on the Brown writ with respect to the constitutionality of that portion of Section 412 of the Correction Law which provides for administrative transfers to Matteawan of inmates of state hospitals previously sentenced to a correctional institution, and who still manifest criminal tendencies.

"The decision has been rendered in the case of *People ex rel. Brown v. McNeill*, dated July 23, 1962 [35 Misc. 2d 53], holding Section 412 of the Correction Law constitutional.

"The petition herein is thus denied and the proceeding dismissed."

It appears that neither Mr. Aronson nor Mr. Fields represented Joseph Brown in his *habeas corpus* proceeding. Brown's petition was drawn in his own hand; the opinion of Mr. Justice Hoyt in that matter, states that Brown appeared *pro se* and testified in his own behalf. As noted, the Court in the *Brown* proceeding held 412 to be constitutional, but directed that a further hearing be had with respect to the basis for Brown's transfer to Matteawan. Brown was transferred from Matteawan to Rockland State Hospital in July of 1962, as an administrative matter, and the order directing a further hearing in his proceeding thus became moot.

An order dismissing the writ of *habeas corpus* in the instant proceeding was entered in the Dutchess County Clerk's Office on October 16, 1962. The petitioner then appealed to the Appellate Division, Second Department, which unanimously affirmed, with opinion. 19 A.D.2d 751 (1963).

Petitioner then appealed to the New York Court of Appeals, as a matter of right, upon the assertion that a constitutional question was involved. On respondent's motion, that Court, by an Order entered November 21, 1963, dismissed the appeal on the ground that petitioner was not a party aggrieved. 13 N. Y. 2d 1043. Petitioner's subsequent motion to vacate that Order and for leave to reargue was denied by an order entered January 9, 1964. 13 N. Y. 2d 1125.

ARGUMENT

Petitioner cannot invoke the jurisdiction of this Court to vindicate the right of a third party.

"The party seeking review of a state court decision 'must show that enforcement of the challenged judgment would deprive it—not another—of some right arising under the Constitution or laws of the United States properly asserted below.' *Liberty Warehouse Co. v. Burley Tobacco Growers' Co-op.*, 276 U. S. 71, 88. In other words, 'a person cannot invoke the jurisdiction of this Court to vindicate the right of a third party.' *Hanson v. Denckla*, 357 U. S. 235, 244; *Barrows v. Jackson*, 346 U. S. 249, 255-9, and cases cited therein; *Joint Anti-Fascist Committee v. McGrath*, 341 U. S. 123, 151-4 (Frankfurter, J., concurring)." Stern and Gressman, Supreme Court Practice (3rd ed.), 335; see also Robertson and Kirkham, Jurisdiction of the Supreme Court (1951 ed.), 329.

Petitioner now argues that he is an appropriate representative of the patients referred to.

The proper test of whether petitioner is an appropriate representative appears to be whether the patients involved have an effective way to assert their constitutional rights.

Barrows v. Jackson, *supra*, 346 U. S. 249, 257 (1953); *N. A. A. C. P. v. Alabama*, 357 U. S. 449, 459-460 (1958); *McGowan v. Maryland*, 366 U. S. 420, 429 (1961); *Tileston v. Ullman*, 318 U. S. 44, 46 (1943); *Poe v. Ullman*, 367 U. S. 497 (1961). It is a matter of record that these patients do have effective legal redress and that they have asserted their remedies even without counsel. *McNeill v. Carroll*, *supra*, 369 U. S. 149 (1962); *In Re Gamillion*, 29 Misc. 2d 729 (Dutchess County Supreme Court, 1962); *People ex rel. Brown v. McNeill*, 35 Misc. 2d 53 (Dutchess County Supreme Court, 1962). We submit that petitioner is not an appropriate representative of the patients involved here, and that their constitutional rights can be effectively vindicated without his intervention.

CONCLUSION

The petition for certiorari should be denied.

Dated: May 6, 1964.

Respectfully submitted:

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